THIRD ANNUAL REPORT

OF THE

CONFLICT OF INTEREST COMMISSIONER

December 1, 2003

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Legislative Assembly

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104-05474/

December 1, 2003

Hon. Greg Deighan, Speaker
Legislative Assembly
P.O. Box 2000
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Dear Mr. Speaker:

It is my honour and duty to submit to you the annual report of the Office of the Conflict of Interest Commissioner for the period January 31, 2002 to June 2003.

This report is submitted pursuant to section 3(1) of the Conflict of Interest Act, R.S.P.E.I. 1988, Cap. C-17-1.

Yours truly,

A. Neil Robinson
Commissioner

THIRD ANNUAL REPORT OF THE CONFLICT OF INTEREST COMMISSIONER

This is the third annual report of the Conflict of Interest Commissioner for the period January 31, 2002 to June 2003.

Conflict of Interest Commissioner

The Conflict of Interest Commissioner is an *independent* officer of the Legislative Assembly responsible for the administration of the *Conflict of Interest Act*. The Office was created in 1999 as a part-time position with part-time clerical assistance provided by the Legislative Assembly Office. The Commissioner is appointed by the Legislative Assembly for a term of five years.

The Commissioner is appointed on the recommendation of the Standing Committee on Legislative Management and ultimately by a resolution of the Legislative Assembly supported by at least two-thirds of the Members. The Commissioner may be removed by a resolution of the Legislative Assembly supported by at least two-thirds of the Members present in the Legislature at that time. Given the nature of the Commissioner's responsibilities, the continuing confidence of the Legislative Assembly is essential.

The Commissioner has four separate but related duties under the *Act*:

First, the Commissioner acts as a confidential advisor to Members, counselling each of them as to their obligations under the legislation. A Member may request written advice or recommendations on any matter respecting the Member's obligations under the *Act*. Where the Member discloses all known relevant facts to the Commissioner and the Commissioner provides advice which is followed by the Member, then the Member cannot be sanctioned under the *Act*. Information disclosed to the Commissioner is confidential and cannot be disclosed except with the Member's written consent, as required by law or otherwise in accordance with the *Act*.

Secondly, all Members must complete and file with the Commissioner a Private Disclosure Statement to disclose all assets, income, liabilities and financial interests held by the Member, the Member's spouse or the Member's dependants. The Commissioner is required to meet with each Member at least once annually, to review the Member's Private Disclosure Statement to ensure the Member has made full disclosure as required by the *Act*.

Thirdly, in accordance with the *Act*, the Commissioner prepares a Public Disclosure Statement for each Member of the Legislative Assembly. These statements are filed with the Clerk of the Legislative Assembly and are available for public inspection.

The fourth role of the Commissioner is to undertake inquiries into alleged contraventions of the *Conflict of Interest Act*. Where a Member alleges that another Member has contravened the *Act*, the Commissioner will investigate. Upon completion of the investigation, the Commissioner provides a report on the matter to the Legislature through the Speaker. If the Commissioner finds that the Member is in breach of the *Act*, the Commissioner will recommend a sanction ranging from a reprimand, to suspension

without indemnity and allowance, to expulsion from the House and declaring the seat vacant. The Commissioner may also recommend no sanction if the breach that occurred was trivial or committed by inadvertence or an honest error in judgment.

Where the Commissioner recommends that a penalty be imposed, the Legislative Assembly may approve the recommendation and impose the penalty or may reject the Commissioner's recommendation. If the Legislative Assembly rejects the recommendation, the Legislature may not deal with the matter in any further way.

Conflict of Interest Legal Framework

Conflict of Interest rules for the Legislative Assembly are found in three statutes: *Criminal Code of Canada*; *Legislative Assembly Act* and the *Conflict of Interest Act*.

The Criminal Code of Canada creates a number of offences which are often referred to as frauds upon government. Sections 118-122 are intended to prevent bribes and influence peddling of government officials. Bribery is the most extreme instance of conflict of interest and is a criminal offence. The Criminal Code of Canada makes bribery punishable by up to 14 years' imprisonment for a parliamentarian who accepts or attempts to obtain any form of valuable consideration for doing or omitting to do anything in his or her official capacity.

Sections 16-22 of the *Legislative Assembly Act* outline certain disqualifications which would prohibit an individual from becoming a member of the Legislation Assembly including convictions or a "corrupt practice of bribery or undue influence". Further, by virtue of section 31 of the *Legislative Assembly Act*, the Legislative Assembly may summarily try and punish breaches of privilege and contempt for a number of offences otherwise punishable under the *Criminal Code* including the acceptance of a bribe by a member of the Legislative Assembly.

The *Conflict of Interest Act* stipulates that a member of the Legislative Assembly must not be involved in a decision during the course of public duties with the knowledge that there is an opportunity to further the member's private interests or to improperly further another person's private interests. (section 9)

The *Act* defines "private interest" as follows:

> *"(g) 'private interest' does not include an interest in a decision,*
>
> *(i) that is of general application*
>
> *(ii) that affects a member or a person belonging to the member's family as one of a broad class pf persons,*
>
> *(iii) that concerns the remuneration of benefits of a member or of an officer or employee of the Legislative Assembly, or*
>
> *(iv) where the interest is so remote or insignificant in its nature that a decision affecting the interest cannot reasonably be regarded as likely to influence the member."*

Other provisions of the *Act* provide that Members may not:

(i) use insider information to further their own private interests, (section 10);
(ii) use the influence of their office to obtain a decision to further their own private interests, (section 11);
(iii) be a party to a contract with the Crown under which the Member receives a benefit, (section 14);

In addition, Members of the Executive Council must not:

(i) engage in any employment or in the practice of any profession;
(ii) manage a business carried on by a corporation;
(iii) hold an office or directorship, unless holding the office or directorship is one of the Member's duties as a member of the Executive Council or the office or directorship is in a social club, religious organization or political party;
(iv) hold or trade in securities, stocks, futures or commodities.

The *Conflict of Interest Act* establishes the principle that all Members are expected to perform their public duties and arrange their private affairs in a manner that avoids conflicts of interest and thereby promotes public confidence in the integrity of the Legislative Assembly. The *Act* adopts a principle-based approach rather than a rules-based approach. The *Act* does not enumerate an exhaustive list of every possible instance that is to be prohibited. To do so would create too strict an approach to controlling the exercise of private interests which in turn might conflict with personal rights thereby deterring potential candidates from seeking public office. The *Conflict of Interest Act* attempts to strike a balance by providing general principles that can be applied to the practical situations that a Member of the Legislative Assembly might encounter.

The purpose of the *Conflict of Interest Act*

In the past few years Canadians have witnessed an increase in conflict of interest allegations made against politicians. Some Canadians have become so cynical that they believe that all in public life are corrupt and there only to enrich themselves at public expense. The reality is quite different. Citizens generally enter public life with the sincere desire to effect positive change in their community, province or country. Where conflict of interest lapses do arise, they are relatively rare. Most often the conflicts of interest are not glaringly obvious but rather are in grey areas where honest differences of opinion may exist. Conflict of interest statutes attempt, insofar as it is possible, to promote the impartiality and integrity of the legislators. Public confidence in the institution of government is totally dependent upon citizens believing that their government will make laws and decisions that are applied and administered fairly and objectively and free of personal bias or interest.

The purpose of the *Conflict of Interest Act* is to assist Members and Ministers in reconciling their private and public interests to enhance public confidence in the Legislative Assembly. Members of the Legislative Assembly must have the trust and confidence of the public who elected them. To achieve that trust and confidence Members and Ministers must adhere to the provisions of the *Act* and conduct their duties without personal bias.

The *Act* provides that Members of the Legislative Assembly must serve the public interest when discharging their public responsibilities. Where there is a conflict between the public interest and the Member's private or family interest, it is the public interest that should prevail. It is expected that Members of the Legislative Assembly will not allow their private interests to compromise their official duties and their public obligations.

Fundamentals of the *Conflict of Interest Act*

To achieve the purpose of the *Conflict of Interest Act* there are three fundamental mechanisms to control conflicts of interest by members of the Legislative Assembly.

First, the *Act* requires full *disclosure*. MLAs are required to make full disclosure of their private interests as well as the private interests of the member's spouse and dependants to the Conflict of Interest Commissioner. This Disclosure permits the Commissioner to assess any potential conflict on the part of the member in carrying out his or her legislative or Executive Council responsibilities. As provided in the *Act*, the Commissioner makes a public disclosure of the Member's private interests. The Public Disclosure Statements are available to the public and are retained in the possession of the Clerk.

The second broad principle is that members of the Legislative Assembly must *reorganize* their private interests or relationships that might impair their judgment in the discharge of their public duties. Such a reorganization may involve divestiture of certain assets or the use of a "blind" trust administered by a trustee.

The third broad principle is that of *recusal* or withdrawal which requires members of the Legislative Assembly to remove themselves from discussions or decisions on matters in which they have a private interest.

There are many other mechanisms to insure transparency and accountability of the Members of the Legislative Assembly. These include the Office of the Information and Privacy Commissioner and the Office of Auditor-General. Additionally, there is daily Question Period and there are various Committees of the Legislature. Such mechanisms are in place to ensure that Members of the Legislative Assembly are subject to the public's close scrutiny in the discharge of their public duties.

Fees, gifts or personal benefits

The *Conflict of Interest Act* prohibits a Member or a person who belongs to the Member's family from accepting a fee, gift or personal benefit that is connected directed or indirectly with the performance of the Member's duties of office. There are exceptions to this general prohibition including: compensation authorized by law; a gift or personal benefit received as a result of protocol, customs or social obligations of being a Member; or where the gift or personal benefit is of such a nature that it could not reasonably be regarded as likely to influence the Member in the performance of the Member's duties.

Where a gift or personal benefit exceeds $500.00 in value or where the total value received from any one source in any twelve month period exceeds that amount, the

Member shall file a disclosure statement indicating the nature of the gift or benefit, its source and the circumstances under which it was given and accepted.

In circumstances where a Member receives a momento or small gift from a visiting dignitary or as a result of a speaking engagement, such a gift would be an incident of protocol, customs or social obligation and therefor its receipt would not be prohibited. Likewise is the receipt of free tickets to community events where the attendance of the Member is expected as a public duty to the Member's constituents. Social convention often demands the attendance of a Member at certain events and very often the promoters of the event expect the presence of an elected official. In those circumstances, accepting a complimentary invitation to attend an event within the Member's own riding or elsewhere as the designated representative of the government or of the Legislative Assembly is acceptable.

Problems arise when the gift or benefit is excessive or given with the intention to influence the Member in the discharge of the Member's public duties. Such circumstances may in the extreme be seen as bribery or influence-peddling.

Each circumstance is unique and must be examined separately however certain factors must be considered in all circumstances such as: the value of the gift; what is reasonable and proper on the facts of the particular case; and whether the gift or benefit could influence the Member in the exercise of the Member's public duty.

Activities of Past Year

a) Legislative Change

During the past year this office recommended several amendments to the *Conflict of Interest Act*. Since that time, amending legislation was introduced in the Legislature and subsequently enacted. The new legislation includes the following revisions to the *Act*:

1 Provisions to allow "Revised Private Disclosure Statements" to be filed rather than a completely new Private Disclosure Statement on a yearly basis. The change is intended to cut down on unnecessary and unduly repetitive paperwork. The Commissioner must be satisfied that the Revised Private Disclosure Statement adequately reflects any relevant changes in the disclosure of the Member of the Legislative Assembly.

#2 Changes which will permit the Commissioner to make a penalty recommendation in respect of any Member who has failed to file or disclose relevant information in the new Revised Private Disclosure Statements as well as the Private Disclosure Statements.

#3 Provisions that clarify that the Commissioner has discretion to conduct inquiries in the manner that the Commissioner deems appropriate.

(b) Conflict of Interest Inquiries

During the subject year, an investigation was requested by Mr. Philip Brown, Member for Cascumpec-Grand River. The request for an investigation concerned an allegation that a company in which he held a majority interest had received student employment funding from the Employment Development Agency, a branch of the Provincial Government. The investigation which was reported on our website at www.assembly.pe.ca determined that funding had gone not to a company owned by the Member, but rather to a company with a similar name.

Also during the year, Messrs. Eric Hammill and Wilbur MacDonald, the Members for Borden-Kinkora and Belfast-Pownal Bay respectively, requested an opinion from the Commissioner as to whether their obligation to begin receiving MLA pension plan benefits at age 69 placed them in a conflict of interest. The opinion given to the Members is also found at the Commissioner's website. The opinion indicates that the MLA pension plan is a "registered pension plan" under the *Income Tax Act* of Canada which requires participants in such plans to begin receiving pension benefits in the year that the participant attains the age of 69 years. Both Members began receiving benefits that were expressly authorized by a pension plan mandated by the Legislative Assembly and in conformity with Federal tax laws. In the circumstances the Members were found not to be in a conflict of interest.

Conclusion

Politics are important to Prince Edward Islanders and Members are acutely aware of the Court of Public Opinion. As a consequence, Members are encouraged to closely scrutinize their conduct otherwise the Legislative Assembly or the media will do so publicly. Many Members of the Legislative Assembly have requested opinions or advice on matters respecting their obligations under the *Act*. These issues concerned a wide range of matters reflecting the complexity of political life in our small Province where elected representatives regularly face a variety of potentially compromising situations. It is my firm belief that the most important function of the Commissioner is to provide advice and guidance before a Member acts. In this respect I am pleased to report that all Members have expressed a willingness to seek such advice and have demonstrated that willingness in requesting advice during many informal discussions.

During the period under review, I have again been impressed with the cooperation displayed by our elected representatives. Without exception each Member has followed the advice or instructions provided by this office.

In closing I wish to express my gratitude to both the Clerk of the Legislature Assembly, Mr. Charles MacKay and Ms. Cheryl Stead, Administrative Officer, in providing much appreciated administrative support and assistance.

November 28, 2003

A. Neil Robinson
Commissioner